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# c 35 Ontario Home Ownership Savings Plan Act, 1988

Ontario

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## CHAPTER 35

### **An Act to assist Ontario Residents to save for the purchase of a First Home**

*Assented to June 8th, 1988*

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

#### **1.—(1) In this Act,**

##### Definitions

“assets of the plan”, in respect of a home ownership savings plan, means all contributions made into the plan, any transfers made into the plan under section 7 and all income earned therefrom and on assets substituted therefor, whether or not the assets of the plan are in the form of qualified investments;

“contribution” means an amount of money paid by an individual to a depositary as a payment into a home ownership savings plan;

“depositary” means a branch or office in Ontario of,

- (a) the Province of Ontario Savings Office, or

- (b) a financial institution that is a member of the Canada Deposit Insurance Corporation or of the Ontario Share and Deposit Insurance Corporation;

“home ownership savings plan” means an arrangement entered into by an individual and a depository under which payment is made by the individual to the depository of an amount of money as a payment under the arrangement to be used, invested or otherwise applied by the depository for the purpose of providing to the individual as the planholder under the arrangement an amount of money to be used by the individual for the purchase by him or her of a qualifying eligible home;

R.S.C. 1952,  
c. 148

“individual” means a person other than either a trust referred to in subdivision k of Division B of Part I of the *Income Tax Act* (Canada) or a corporation;

“Minister” means the Minister of Revenue;

“Ontario home ownership savings plan” means a home ownership savings plan that complies with section 2;

“planholder”, in respect of a home ownership savings plan, means an individual eighteen or more years of age to whom, under the plan, a single payment is agreed to be paid, but does not include an individual to whom under a plan a single payment is agreed to be paid as a consequence of the death of another individual;

“prescribed” means prescribed by the regulations;

“qualified investment” means an investment that is a qualified investment for the purposes of section 4;

“qualifying contribution” has the meaning given to that expression by section 3;

“qualifying eligible home” has the meaning given to that expression by subsection 5 (4);

“regulations” means the regulations made under this Act;

“solicitor” means a member of the Law Society of Upper Canada who is entitled to practise law in Ontario as a barrister and solicitor and who maintains all insurance coverage that may be required by the Law Society of Upper Canada from time to time in connection with and for the purposes of carrying on the private practice of law in Ontario;

“spouse” means an individual to whom an individual is married;

“tax credit” means an Ontario home ownership savings plan tax credit allowed to an individual or the individual’s spouse or former spouse under the *Income Tax Act* with respect to the amount of qualifying contributions made by the individual to an Ontario home ownership savings plan;

R.S.O. 1980,  
c. 213

“tax credit recovery” means the amount determined under subsection 9 (1);

“taxation year” has the meaning given to that expression by the *Income Tax Act*;

“Treasurer” means the Treasurer of Ontario.

(2) For the purposes of this Act, an eligible home is,

Eligible  
home

- (a) a detached house;
- (b) a semi-detached house;
- (c) a townhouse;
- (d) a share or shares of the capital stock of a co-operative corporation if the share or shares are acquired for the purpose of acquiring the right to inhabit a housing unit owned by the corporation;
- (e) a mobile home that complies with the prescribed standards and is suitable for year round permanent residential occupation;
- (f) a condominium unit;
- (g) a residential dwelling that is a duplex, triplex or a fourplex; or
- (h) any other residential property as may be prescribed.

(3) For the purposes of this Act, an individual shall not be considered to own an eligible home unless,

Ownership of  
eligible home

- (a) in the case of an eligible home referred to in clause (2) (a), (b), (c) or (g), the individual has an ownership interest in the eligible home and,

R.S.O. 1980,  
c. 84

- (i) owns a freehold estate in the land subjacent to the eligible home other than as a mortgagee, or
  - (ii) is a lessee of the land subjacent to the eligible home;
- (b) in the case of an eligible home that is a condominium unit, the individual is an owner of the unit and common elements within the meaning of the *Condominium Act*;
- (c) in the case of an eligible home in the form of a share or shares of the capital stock of a co-operative corporation,
  - (i) the individual has acquired, jointly with another person or otherwise, the share or shares to enable the individual to acquire a right to occupy a housing unit owned by the co-operative corporation,
  - (ii) the individual and the co-operative corporation have entered into an enforceable occupancy agreement in respect of the housing unit, and
  - (iii) the individual is entitled to vacant possession of the housing unit under the terms of the occupancy agreement;
- (d) in the case of an eligible home that is a mobile home suitable for year-round permanent residential occupation,
  - (i) the individual, either alone or jointly with another person, has completed the purchase of the mobile home,
  - (ii) the mobile home is situated on a foundation, which meets the prescribed standards, on the land where it is to be inhabited, and
  - (iii) the land is owned by the individual, jointly with another person or otherwise, or is occupied by the individual under a licence or lease that permits the individual to locate the mobile home on the land and to occupy it as a year-round residence; and

- (e) in the case of an eligible home of a prescribed class or nature, or owned by a member of a prescribed class of persons, the prescribed terms and conditions are met.

**2.** For the purposes of this Act and the *Income Tax Act*, a home ownership savings plan entered into by a planholder and a depository after the 31st day of August, 1988, and before the 1st day of January, 1994, that complies with the following terms and conditions is an Ontario home ownership savings plan:

Terms of  
Ontario  
home  
ownership  
savings plan  
R.S.O. 1980,  
c. 213

1. The terms of the plan do not permit any payment to the planholder of any asset of the plan except by way of,
  - i. a single payment of all of the assets of the plan to a solicitor designated by the planholder to hold the assets of the plan as trust property in trust for the planholder and the Crown jointly and to legally represent the planholder in the purchase by the planholder of a qualifying eligible home, or
  - ii. a single payment of all the assets of the plan, less the amount to be withheld by the depository under section 9 or the amount, if any, directed by the Minister under subsection 5 (5), to the planholder or to the legal personal representative of the planholder upon the death of the planholder.
2. The terms of the plan require the depository to withhold and remit to the Minister the percentage of the total value of the assets of the plan required under section 9 on any payment of assets of the plan to the planholder or to the legal personal representative of the planholder upon the death of the planholder.
3. The terms of the plan provide that the depository will accept repayment of assets into the plan from a solicitor to whom assets of the plan were paid.
4. The terms of the plan provide that the payment to the planholder is not capable in whole or in part of surrender, assignment or transfer except as permitted by an election under section 7.

R.S.C. 1952,  
c. 148

5. The planholder is at least eighteen years of age and a resident of Ontario at the time of entering into the plan.
6. The planholder has been assigned a Social Insurance Number referred to in section 237 of the *Income Tax Act* (Canada) and has provided that number and the Social Insurance Number of the planholder's spouse, if the planholder is married, to the depositary at the time of entering into the plan.
7. The planholder is not and has never previously been a planholder under any other Ontario home ownership savings plan.
8. The planholder has never owned an eligible home anywhere in the world.
9. No spouse of the planholder with whom the planholder resides, or from whom the planholder lives separate and apart for reasons other than marriage breakdown, has ever owned an eligible home anywhere in the world.
10. The terms of the plan prohibit any amendment to the terms of the plan other than the addition or deletion of the right of the planholder to make an election described in subsection 7 (1).
11. The terms of the plan provide that on the death of the planholder, the depositary shall transfer or distribute all assets of the plan, less any amount required by section 9 to be withheld and remitted to the Minister, in accordance with this Act.
12. The terms of the plan prohibit the holding of the assets of the plan in any form other than qualified investments.
13. The plan includes a provision denying the depositary any right of set-off as regards the assets of the plan in connection with any debt or obligation to the depositary that the planholder under the plan owes or may thereafter owe.
14. The terms of the plan provide that no loan or advance may be made to the planholder or to any person with whom the planholder does not deal at arm's length, within the meaning of section 251 of

the *Income Tax Act* (Canada), if a condition of such loan or advance is the existence of the plan. R.S.C. 1952, c. 148

15. The terms of the plan include the acknowledgment by the planholder that he or she understands that the amount of a tax credit, if any, available under the *Income Tax Act* with respect to contributions made to the plan in any year depend on the planholder's level of income for that year and that the provisions of this Act apply notwithstanding that the planholder may not be entitled to a tax credit in any year. R.S.O. 1980, c. 213

16. The terms of the plan provide that any receipt,

- i. for a contribution to the plan, issued by the depositary after the date on which the planholder has received, or has been deemed by this Act to have received, any assets of the plan or the use or benefit of any assets of the plan, other than in accordance with section 5, or
- ii. for a contribution made to the plan after the 31st day of December of the fourth calendar year ending after the end of the calendar year in which the plan was entered into by the depositary and the planholder,

shall be in a form substantially different from the form of receipt required to be filed with the Minister by a planholder claiming a tax credit under the *Income Tax Act* with respect to contributions made to an Ontario home ownership savings plan. R.S.O. 1980, c. 213

17. The terms of the plan contain the consent of the planholder to the release to the Minister of all information obtained by the depositary with respect to the plan, the planholder and the planholder's spouse, if any, for the purposes of this Act and the operation of the plan.
18. The terms of the plan comply with any additional prescribed conditions or requirements.

3.—(1) The total amount of a planholder's qualifying contributions to an Ontario home ownership savings plan for a calendar year for the purposes of this Act and the *Income Tax Act* shall not exceed the lesser of, Maximum annual qualifying contributions R.S.O. 1980, c. 213



- (a) the total amount of qualifying contributions made by the planholder to the planholder's Ontario home ownership savings plan during the calendar year; and
- (b) \$2,000.

Time limit  
for qualifying  
contributions

(2) No contribution to an Ontario home ownership savings plan shall be a qualifying contribution unless it is made on or before the earlier of,

- (a) the 31st day of December, 1997; and
- (b) the 31st day of December of the fourth calendar year ending after the end of the calendar year in which the plan was entered into by the depository and the planholder.

Idem

R.S.O. 1980,  
c. 213

(3) No contribution to an Ontario home ownership savings plan shall be a qualifying contribution for the purposes of this Act and the *Income Tax Act* where,

- (a) the planholder has received or has been deemed by this Act to have received, other than by reason of death, any assets of the plan or the benefit or use of any assets of the plan during the year in which the contribution is made, otherwise than for the purpose of purchasing a qualifying eligible home described in subsection 5 (4);
- (b) the contribution has been made at a time when the planholder or a spouse of the planholder with whom the planholder resides, or from whom the planholder is separated for reasons other than marriage breakdown,
  - (i) is the owner of an eligible home, or
  - (ii) is a partner in a partnership that owns property that would be an eligible home of the partner if the property was owned by the partner;
- (c) the planholder or a spouse of the planholder with whom the planholder resides at the end of the calendar year in which the contribution is made, or from whom the planholder lives separate and apart for reasons other than marriage breakdown, owns or owned at any time an interest in an eligible

home, other than an interest in the qualifying eligible home referred to in clause (a); or

- (d) the planholder does not reside in Ontario at the end of the taxation year in which the contribution is made.

**4.—(1)** A depositary of an Ontario home ownership savings plan shall hold all assets of the plan only in qualified investments. Duty to hold in qualified investments

(2) For the purposes of this Act, a qualified investment is, Qualified investments defined

- (a) money that is legal tender in Canada;
- (b) a deposit that is,
- (i) with a branch of the Province of Ontario Savings Office or insured by the Canadian Deposit Insurance Corporation or the Ontario Share and Deposit Insurance Corporation, and
- (ii) repayable on demand or, where the deposit has a fixed maturity date, is redeemable at the option of the planholder prior to maturity; or
- (c) any other type of investment prescribed by the regulations.

**5.—(1)** Where a planholder has entered into a written agreement to purchase an eligible home that will be a qualifying eligible home described in subsection (4) and requests release from the planholder's Ontario home ownership savings plan of assets of the plan to be applied towards the purchase price of the eligible home, the following rules apply: Purchase of qualifying eligible home

1. The planholder shall designate a solicitor for the purposes of this Act in the prescribed manner.
2. The planholder shall make application to the depositary of the Ontario home ownership savings plan in the prescribed manner and in the prescribed form for release of the assets of the plan.
3. The depositary shall release, not earlier than thirty days before the date set out in the agreement of purchase and sale as the date of closing of the purchase of the eligible home, the assets of the plan as trust property to the solicitor designated by the

planholder and shall file with the Minister at the prescribed time a return in the prescribed form notifying the Minister of the particulars of the release.

4. The solicitor designated by the planholder shall hold the assets of the plan released by the depositary separate and apart from the solicitor's own money, assets and estate, in trust for the benefit of the planholder and Her Majesty in right of Ontario, jointly, and shall deal with the trust property only as provided in paragraph 5 or 6, as applicable.
5. In the event that,
  - i. the agreement of purchase and sale of the eligible home is not completed within the prescribed time after release by the depositary of the assets of the plan to the solicitor in trust,
  - ii. the solicitor declines to accept receipt of the assets of the plan in trust, or declines to assume or fulfil the duties required of the solicitor under this Act, or
  - iii. the solicitor declines to or ceases to represent the planholder in the purchase by the planholder of the eligible home,

the solicitor shall forthwith remit the entire assets of the plan to the depositary in the prescribed manner.

6. Where the agreement of purchase and sale of the eligible home is completed within the prescribed time, the solicitor may release the assets of the plan to the vendor under the agreement of purchase and sale or to the planholder as part or all of the consideration payable by the planholder for the purchase of the eligible home.
7. Upon completion of the purchase of the eligible home by the planholder and the disbursement by the solicitor of the assets of the plan, the solicitor shall file with the Minister proof acceptable to the Minister of the completion of the purchase of the eligible home and the fulfilment by the solicitor of his or her duties under this Act.

Idem

(2) For the purposes of paragraph 1 of section 2, no payment shall be deemed to have been made by a depositary of an Ontario home ownership savings plan to a solicitor where

the solicitor has remitted the assets of the plan received from the depositary to the depositary under paragraph 5 of subsection (1).

(3) The interest of Her Majesty in right of Ontario in the assets of the plan shall be deemed to be released only where the solicitor has paid over the assets of the plan in accordance with paragraph 6 of subsection (1) on the purchase by the planholder of an eligible home that will be a qualifying eligible home.

Release of  
Crown's  
interest

(4) For the purposes of this Act, an eligible home is a qualifying eligible home only where,

Qualifying  
eligible home  
defined

- (a) the eligible home is located in Ontario and is suitable for use as a year-round dwelling place, or, in the case of an eligible home that is in the form of a share or shares in the capital stock of a co-operative corporation, the housing unit is located in Ontario and is suitable for use as a year-round dwelling place;
- (b) the eligible home is the first eligible home anywhere owned, jointly with another person or otherwise, by the planholder; and
- (c) the eligible home is acquired as the principal residence of the planholder to be ordinarily inhabited by the planholder or by the planholder's spouse or an individual who was the planholder's spouse at the time of acquisition by the planholder of the eligible home, or by both of them, for a period of at least thirty consecutive days within two years of the first day of ownership by the planholder.

(5) Where the assets of the plan have not been released under subsection (1), the Minister may, if the Minister is satisfied that the planholder has purchased property that is or may become a qualifying eligible home under subsection (4),

Minister's  
discretion to  
release

- (a) consent to the release of the assets of the plan by the depositary to the planholder;
- (b) in the case of an agreement to purchase a proposed condominium unit that may become a qualifying eligible home, consent to the release of the assets of the plan to the planholder, but the date of release of the assets of the plan shall be not more than thirty days before the date when a deed or transfer of the unit acceptable for registration is to be deliv-

ered to the planholder unless the Minister is satisfied that,

- (i) the planholder is required, under the agreement to purchase the proposed condominium unit, to take possession of or to occupy the proposed condominium unit before a deed or transfer of the unit acceptable for registration is delivered to the planholder, and
- (ii) the total amount the planholder has paid or is required to pay forthwith to the vendor of the proposed condominium unit under the agreement is equal to or greater than the value of the assets of the plan;
- (c) direct that no amount, or an amount not in excess of the amount otherwise determined under subsection 9 (2), be deducted, withheld and remitted to the Minister by the depositary of the plan under subsection 9 (2); and
- (d) impose such conditions on the release as the Minister, in his or her discretion, considers necessary to ensure compliance with this Act and the regulations.

**Refund**

(6) Where an amount has been deducted, withheld and remitted under clause (5) (c), the Minister may refund the amount to the planholder, together with interest on the amount at the prescribed rate, where the Minister is satisfied that the property purchased by the planholder is or will be a qualifying eligible home under subsection (4).

**Proposed  
condominium  
unit**

(7) For the purposes of subsection 12 (1), where the assets of an Ontario home ownership savings plan have been released under subsection (5) to a planholder who has entered into an agreement to purchase a proposed condominium unit, the planholder shall be deemed to have acquired ownership of the proposed condominium unit and the proposed condominium unit shall be deemed to be an eligible home on the date the planholder is entitled to immediate vacant possession of the proposed condominium unit.

**Death of  
planholder**

**6.** Subject to section 7, in the event of the death of a planholder of an Ontario home ownership savings plan,

- (a) the planholder shall be deemed to have received all of the assets of the plan immediately before his or her death; and

- (b) the depositary of the Ontario home ownership savings plan shall pay over the assets of the plan, less the amount required to be withheld and remitted to the Minister under section 9, to the legal personal representative of the deceased planholder or, where the planholder had previously designated in writing a person entitled to receipt of the assets of the plan on the death of the planholder, to such person.

7.—(1) If permitted by the terms of the plan, the planholder of an Ontario home ownership savings plan may make and file with the depositary of the plan an election in writing, electing to transfer all assets of the plan on the death of the planholder to the Ontario home ownership savings plan of the planholder's spouse if the spouse survives the planholder.

Election to transfer on death of planholder

(2) Subject to subsection (3), where the planholder of an Ontario home ownership savings plan has made and filed an election under subsection (1) that was not revoked by the planholder before his or her death, the depositary of the plan shall, upon the death of the deceased planholder,

Transfer to spouse's plan

- (a) transfer all assets of the plan within fifteen months of the death of the deceased planholder to the Ontario home ownership savings plan of which the spouse of the deceased planholder is the planholder; and
- (b) notify the Minister in writing of the transfer and provide to the Minister such information with respect to the transfer as the Minister may require.

(3) No transfer may be made under subsection (2) unless,

No transfer to spouse's plan

- (a) the spouse is alive at the time of the transfer to the spouse's Ontario home ownership savings plan; and
- (b) the spouse is eligible under this Act to be and is a planholder of an Ontario home ownership savings plan at the time of the transfer.

(4) For the purposes of this Act and the *Income Tax Act*, where assets of the plan of a deceased planholder have been transferred under subsection (2),

Idem  
R.S.O. 1980,  
c. 213

- (a) all such property shall be deemed to form part of the assets of the plan of the spouse from the date of death of the deceased planholder;

- (b) any tax credit allowed under the *Income Tax Act* to a person with respect to any qualifying contribution made by the deceased planholder to the deceased planholder's Ontario home ownership savings plan shall be deemed to be a tax credit allowed to the spouse at the time, in the amount and in respect of the taxation year such tax credit was allowed under that Act to such person, notwithstanding that by operation of this clause the total amount of tax credits allowed and deemed to have been allowed to the spouse in respect of any taxation year exceeds the maximum tax credit allowed under that Act for the taxation year, and the date of the first assessment referred to in subclause 9 (1) (b) (i) shall be, for the purposes of determining the amount of interest that may be payable at any time by the spouse under subsection 9 (1), the date of the first assessment for the taxation year under which the tax credit was allowed to such person;
- (c) the deceased planholder shall be deemed not to have received any assets of the plan; and
- (d) the amount of the transfer shall not be taken into consideration in determining the amount of any tax credit that may be claimed by any person under the *Income Tax Act* with respect to contributions to the spouse's plan.

R.S.O. 1980,  
c. 213

Deemed  
revocation of  
election

(5) Where no transfer under subsection (2) may be made by reason of the provisions of subsection (3), the deceased planholder shall be deemed to have revoked the election referred to in subsection (1) prior to death.

Multiple  
transfers

(6) For the purposes of clause (4) (b), the qualifying contributions made by the deceased planholder to the deceased planholder's Ontario home ownership savings plan shall be deemed to include all qualifying contributions made by any other deceased planholder to an Ontario home ownership savings plan the assets of which have been transferred under this section to the deceased planholder's Ontario home ownership savings plan.

Replacement  
depository

**8.** An Ontario home ownership savings plan may at any time be revised or amended to provide for the transfer, on behalf of and at the direction of the planholder, of the assets of the plan by the depository to another depository, which may be referred to as a replacement depository, to be held by the replacement depository as assets of an Ontario home ownership savings plan and upon the transfer.

- (a) the amount transferred shall not be deemed to have been received by the planholder;
- (b) the replacement depositary shall hold the amount transferred as assets of the Ontario home ownership savings plan of the planholder under an arrangement the terms and conditions of which comply with section 2 and shall assume and fulfil the responsibilities under this Act of the depositary of the plan;
- (c) the transfer shall not be considered to be a qualifying contribution to an Ontario home ownership savings plan; and
- (d) the planholder shall not be considered to have entered into more than one Ontario home ownership savings plan by reason only of the transfer.

9.—(1) Where a planholder under an Ontario home ownership savings plan receives any assets of the plan or the use or benefit of any assets of the plan either directly or indirectly, or is deemed by this Act to have received any assets of the plan, other than for the purpose of purchasing a qualifying eligible home described in subsection 5 (4), the planholder is liable to pay to the Treasurer an amount equal to the aggregate of,

Tax credit  
recovery

- (a) a tax credit recovery equal to the total amount of all tax credits allowed under the *Income Tax Act* to the planholder or to the planholder's spouse or former spouse in respect of qualifying contributions made by the planholder to the plan; and
- (b) interest at the prescribed rate on the amount of each such tax credit computed from the later of,
  - (i) the date of the first assessment under the *Income Tax Act* for the taxation year to which the tax credit applies which allows the tax credit to any person, and
  - (ii) the 30th day of April of the year following the taxation year to which the tax credit applies,

R.S.O. 1980,  
c. 213

to the date of payment by the planholder.

(2) Except in the circumstances described in section 5, where a depositary of an Ontario home ownership savings plan pays out or releases any assets of the plan to any person,

Withholding  
by depositary



or the planholder is deemed by this Act to have received any assets of the plan, the depositary shall,

- (a) file with the Minister a return in the prescribed form containing the prescribed information within thirty days of the date of the payment or release of the assets of the plan or the date the planholder is deemed by this Act to have received any assets of the plan, as the case may be;
- (b) deduct and withhold from the assets of the plan and remit to the Minister in the prescribed manner and at the prescribed time, on account of the tax credit recovery and interest payable by the planholder under subsection (1), an amount equal to 25 per cent of the total value of all assets of the plan immediately before the payment or release or on the date the planholder is deemed by this Act to have received any assets of the plan, as the case may be; and
- (c) hold the amount required to be withheld and remitted under clause (b) separate and apart from the depositary's own money, assets and estate, in trust for Her Majesty in right of Ontario, until the amount is remitted to the Minister.

Notice of  
determination  
of tax credit  
recovery and  
interest

(3) Where a planholder is liable to pay an amount under subsection (1), the Minister shall determine the amount of the tax credit recovery and interest payable by the planholder and shall send to the planholder a notice of determination of the tax credit recovery and interest.

Payment of  
tax credit  
recovery and  
interest

(4) The planholder shall, within thirty days from the day of mailing of the notice of determination under subsection (3), pay to the Treasurer any part of the tax credit recovery and interest then remaining unpaid, whether or not an objection to or an appeal from the Minister's determination is outstanding, all amounts received by the Treasurer under this section to be applied firstly to any interest then payable and any balance then remaining to be applied against the tax credit recovery payable.

Refund of  
overpayment

(5) The Minister shall, on or after mailing the notice of determination under subsection (3), refund any overpayment made on account of the amount payable by the planholder under subsection (1) and shall pay interest at the prescribed rate on such overpayment from the day when the overpayment arose to the day of refunding, unless the amount of the

interest calculated is less than one dollar, in which event no interest shall be paid.

(6) A notice of determination under this section includes *Idem* any amended notice of determination.

(7) Where an amount has been deducted, withheld and remitted under subsection (2), the receipt of the Minister therefor is a full and sufficient discharge to the depositary for the payment over of such money and such payment is a full and complete discharge to the depositary making it and for any claim to such payment by any person who claims to be entitled to the funds. *Idem*

(8) Where a depositary fails to deduct, withhold and remit an amount as required by subsection (2), the depositary is liable to the Crown for the amount that should have been deducted, withheld and remitted. *Idem*

(9) The terms of an Ontario home ownership savings plan may permit a depositary, on a transfer, payment or release of the assets of the plan, to deduct any fees or charges payable by the planholder to the depositary in connection with the operation or administration of the plan from the assets of the plan remaining after the deduction of any amount required to be deducted under subsection (2). *Administration fee*

**10.—(1)** Where the Minister determines that,

*Proposal to  
close plan*

- (a) a home ownership savings plan purporting to be an Ontario home ownership savings plan has failed to comply with the requirements of section 2;
- (b) a contribution made to an Ontario home ownership savings plan was not a qualifying contribution by reason of clause 3 (3) (a), (b) or (d);
- (c) the planholder of an Ontario home ownership savings plan owns or owned at any time an interest in an eligible home;
- (d) the spouse of a planholder of an Ontario home ownership savings plan with whom the planholder resides, or from whom the planholder lives separate and apart for reasons other than marriage breakdown, owns or owned, at any time when the planholder and the spouse were married, an interest in an eligible home; or

- (e) the assets of the plan are not held in the form of qualified investments,

the Minister may serve on the planholder and the depositary of the plan, by ordinary mail or by personal service, a notice of proposal to close the plan, together with written reasons therefor.

Consent to  
release after  
proposal

(2) Where the Minister has served a proposal under subsection (1), the depositary shall not release any assets of the plan to any person without obtaining the prior written consent of the Minister to the release.

Objection

(3) Where the planholder objects to a proposal served under subsection (1), the planholder may, within sixty days from the date of mailing of the proposal, serve on the Minister by registered mail addressed to the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

Closing of  
plan

(4) Where no notice of objection is served under subsection (3), the Minister may carry out the proposal to close the plan by serving on the planholder and the depositary, by ordinary mail or personal service, a notice of closing of the plan.

Recovery of  
tax credits

(5) Where the Minister serves a notice of closing under subsection (4),

- (a) the planholder shall be deemed, for the purposes of section 9, to have received all the assets of the plan on the day of mailing of the notice of closing;
- (b) the depositary shall deduct, withhold and remit to the Minister under subsection 9 (2),
  - (i) where the Minister specifies in the notice of closing an amount to be deducted, withheld and remitted, such amount in lieu of the amount otherwise required under subsection 9 (2), and
  - (ii) where the Minister does not specify in the notice of closing an amount to be deducted, withheld and remitted, the amount required to be deducted, withheld and remitted under subsection 9 (2); and
- (c) where the Minister specifies in the notice of closing an amount to be deducted, withheld and remitted by the depositary of the plan, the notice of closing

shall be deemed, for the purposes of sections 9 and 12, to be a notice of determination of tax credit recovery and interest sent to the planholder under subsection 9 (3).

**11.** In the event that a planholder under an Ontario home ownership savings plan has not obtained a release of the assets of the plan under section 5 and completed, on or before the 31st day of December, 1999, the purchase of property that will be a qualifying eligible home, the planholder shall be deemed, for the purposes of section 9, to have received all the assets of the plan on the 1st day of January, 2000.

Deemed receipt of assets of plan on 1st day of January, 2000

**12.—(1)** Where, after the assets of an Ontario home ownership savings plan have been released under section 5 and used in the purchase of property, the Minister determines that,

Tax credit recovery after release of assets of plan

- (a) the Ontario home ownership savings plan failed to comply with the requirements of section 2;
- (b) a contribution made to the Ontario home ownership savings plan was not a qualifying contribution by reason of clause 3 (3) (a), (b) or (d);
- (c) the planholder of the Ontario home ownership savings plan owned an interest in an eligible home at any time before the purchase of the property;
- (d) a spouse of the planholder of the Ontario home ownership savings plan with whom the planholder resided at the time of the purchase of the property, or from whom the planholder lived separate and apart for reasons other than marriage breakdown, owned, at any time before the purchase of the property and while the planholder and the spouse were married, an interest in an eligible home; or
- (e) the assets of the plan were used in the purchase of property,
  - (i) that was not a qualifying eligible home, or
  - (ii) from a person who, at the time of the purchase, did not deal, within the meaning of section 251 of the *Income Tax Act* (Canada), at arm's length with the planholder, for a consideration less than the value of the assets of the plan at the time of the release of the assets of the plan under section 5,

R.S.C. 1952,  
c. 148

the Minister may serve, on the former planholder of the plan, by ordinary mail or by personal service, a notice of determination of tax credit recovery and interest, together with written reasons therefor.

Idem

(2) Where a notice of determination of tax credit recovery and interest has been served under subsection (1), the former planholder of the plan shall be deemed, for the purposes of subsections 9 (1), (4) and (6), to have received all of the assets of the plan on the date the assets of the plan were released under section 5 by the depositary thereof and shall be liable to pay to the Treasurer the amount determined under subsection 9 (1).

Objection

(3) Where a planholder or former planholder objects to a notice served under subsection (1) or 9 (3), the planholder or former planholder may, within sixty days from the day of mailing of the notice, serve on the Minister, by registered mail addressed to the Minister, a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

Idem

(4) The Minister may accept a notice of objection under this section or section 10 notwithstanding that it was not served in the manner required.

Reconsideration

(5) Upon receipt of a notice of objection served under this section or section 10, the Minister shall, with all due dispatch, reconsider the proposal or determination objected to and confirm, vary or abandon the proposal or determination, and the Minister shall thereupon notify the planholder or former planholder making the objection of his or her action by registered mail.

Where decision final

(6) A decision of the Minister under subsection (5) is final and is not subject to appeal except where the decision involves the interpretation of a provision of this Act or the *Income Tax Act*, or involves an issue solely of law.

R.S.O. 1980,  
c. 213

Determination of question

(7) In any dispute over a decision or action of the Minister under subsection (5), the Minister may, where the dispute involves the interpretation of a provision of this Act or the *Income Tax Act*, or involves an issue solely of law in which no facts are in dispute, or involves the proper inference to be drawn from facts that are not in dispute, agree in writing with the disputing party as to the undisputed facts and thereafter apply to the Divisional Court to have the issue in dispute determined, and if the Minister does not make the application within six weeks of the date upon which the undisputed facts

have been agreed upon in writing, the other party to the dispute may apply to the court to have the issue determined.

**13.—(1)** Upon default of payment by any person of any amount owing by the person to the Treasurer under this Act, Action to collect

- (a) the Minister may bring an action for the recovery thereof in any court in which a debt or money demand of a similar nature may be collected, and every such action shall be brought and executed in and by the name of the Minister or the Minister's name of office and may be continued by the Minister's successor in office as if no change had occurred, and shall be tried without a jury; and
- (b) the Minister may issue a warrant directed to the sheriff of any county or district in which any property of the person is located or situate, for the amount owing, including interest if applicable, by the person, together with interest thereon from the date of the issue of the warrant and the costs, expenses and poundage of the sheriff, and the warrant has the same force and effect as a writ of seizure and sale issued out of the Supreme Court of Ontario.

(2) For the purpose of any proceeding taken under this Act, the facts necessary to establish compliance on the part of the Minister with this Act as well as the failure of any person to comply with this Act shall, unless evidence to the contrary satisfactory to the court is adduced, be sufficiently proved in any court of law by affidavit of the Minister or of any officer of the Ministry of Revenue. Idem

(3) Section 34 of the *Retail Sales Tax Act*, which relates to garnishment, applies with necessary modifications with respect to amounts payable to the Treasurer under this Act. Garnishment  
R.S.O. 1980,  
c. 454

(4) Where the Minister considers it advisable, the Minister may accept security for the payment of any amount payable under this Act in any form that the Minister considers satisfactory. Acceptance  
of security

(5) The use of any of the remedies provided by this Act does not bar or affect any of the other remedies herein provided, and the remedies provided by this Act for the recovery or enforcement of the payment of an amount payable under this Act are in addition to any other remedies existing at law. Idem

Duty to keep records

R.S.O. 1980,  
c. 97

**14.**—(1) Every depositary under this Act shall keep the prescribed records at its permanent establishment in Ontario, as defined in the *Corporations Tax Act*, or at its place of business in Ontario, or at such other place of business as is designated by the Minister in respect of any particular depositary, in the form and containing such information as will enable the Minister to determine that this Act and the regulations have been complied with.

Failure to keep records

(2) Where the depositary has failed to keep adequate records for the purposes of this Act, the Minister may require the depositary to keep such records as may be specified by the Minister.

Retention of records

(3) Every depositary required by this section to keep records shall, until permission for their disposal is given by the Minister, retain each such record and every account and voucher necessary to verify the information in each such record.

Audit

**15.**—(1) Any person authorized by the Minister for any purpose relating to the administration or enforcement of this Act may at all reasonable times enter into any premises or place where any business is carried on or any property is kept or anything is done in connection with any business or where records are or should be kept pursuant to this Act, and,

R.S.O. 1980,  
c. 213

(a) audit or examine the books and records and any account, voucher, letter, telegram or other document that relates or may relate to the information that is or should be in the books or records or the amount of any tax credit paid or payable under the *Income Tax Act* in connection with this Act;

R.S.O. 1980,  
c. 213

(b) examine any property, process or matter, an examination of which may, in his or her opinion, assist the person in determining the accuracy of any application required by this Act or ascertaining the information that is or should be in the books and records or in the application, or the amount of any tax credit under the *Income Tax Act* in connection with this Act; and

(c) require any person on the premises to give him or her all reasonable assistance with the audit or examination and to answer all questions relating to the audit or examination either orally or, if so required, in writing, on oath or statutory declaration and, for that purpose, require the person to attend at the premises or place with him or her.

(2) The Minister may, for any purpose relating to the administration and enforcement of this Act, by registered letter or by a demand served personally, require from any depositary or from any officer, director or agent thereof, or from any other person,

Demand for information

- (a) any information or additional information or any required or prescribed form; or
- (b) production, or production on oath or affirmation, of books, letters, accounts, invoices, statements, financial or otherwise, or other documents,

within such reasonable time as is stipulated in the letter or demand.

(3) Where a book, record or other document has been examined or produced under this section, the person by whom it is examined or to whom it is produced or any officer of the Ministry of Revenue may make, or cause to be made, one or more copies thereof and a document purporting to be certified by the Minister or by a person thereunto authorized by the Minister to be a copy made pursuant to this section is admissible in evidence and has the same probative value as the original document would have had if it had been proven in the ordinary manner.

Copies

(4) No person shall hinder, molest or interfere with any person doing anything that he or she is authorized by this section to do or prevent or attempt to prevent any person doing any such thing and, notwithstanding any other law to the contrary, every person shall, unless he or she is unable to do so, do everything he or she is required by this section to do.

Duty to comply

(5) Any officer or employee of the Ministry of Revenue who is authorized by the Minister may administer oaths and take or receive affidavits, declarations or affirmations for the purpose of or incidental to the administration or enforcement of this Act, and every person so authorized has, in respect of any such oath, affidavit, declaration or affirmation, all the powers of a commissioner for taking affidavits.

Administration of oaths

**16.** Every person employed directly or indirectly in the administration or enforcement of this Act or the *Income Tax Act*, or in the development and evaluation of tax policy for the Government of Ontario, shall preserve secrecy with respect to all matters related to this Act that come to his or her knowledge in the course of such employment and shall not communicate any information or material related to any such matter to any other person not legally entitled thereto except,

Confidentiality  
R.S.O. 1980,  
c. 213



R.S.O. 1980,  
c. 213

R.S.C. 1952,  
c. 148

- (a) as may be required in connection with the administration or enforcement of this Act, the *Income Tax Act* or any other Act administered by the Minister or the *Income Tax Act* (Canada) or the regulations under any of them;
- (b) as may be required in connection with the development and evaluation of tax policy by the Government of Ontario or the Government of Canada;
- (c) to his or her counsel; or
- (d) with the consent of the person to whom the information or material relates.

Offences

**17.—(1)** Any person who contravenes any provision of this Act or the regulations is guilty of an offence and, upon conviction, is liable, where no other penalty is provided for the offence, to a fine of not less than \$50 and not more than \$2,000.

False  
statements

(2) Every person who,

- (a) makes, participates in, assents to or acquiesces in the making of a statement in any document required by or for the purposes of this Act or the regulations that, at the time and in the light of the circumstances under which it was made, is false or misleading in respect of any material fact or that omits to disclose any material fact the omission of which makes the statement false or misleading;
- (b) makes, assents to, participates in or acquiesces in the making of false or misleading entries, or omits to, or assents to or participates or acquiesces in the omission of entering a material particular, in records required to be maintained under this Act or the regulations;
- (c) knowingly converts to his or her own use a payment of a tax credit under the *Income Tax Act* in respect of a contribution to an Ontario home ownership savings plan to which he or she was not entitled; or
- (d) conspires with any person to commit an offence described in clause (a), (b) or (c),

R.S.O. 1980,  
c. 213

is guilty of an offence and on conviction is liable to a fine of not more than \$2,000, or if such person is a corporation, to a fine of not more than \$20,000.

(3) No person is guilty of an offence under clause (2) (a) or (b) if he or she did not know, and in the exercise of due diligence could not have known, that the statement or entry was false or misleading or the omission makes a statement or record false or misleading. Exception

(4) Subsections 49 (1), (2), (4), (5), (6), (7), (9) and (11) of the *Income Tax Act* apply with necessary modifications for the purposes of this Act. Idem  
R.S.O. 1980,  
c. 213

**18.** Proceedings to enforce any provision of this Act with respect to an Ontario home ownership savings plan may be commenced not later than six years after, Limitation

- (a) where the assets of the plan have been released under section 5, the date of the release; and
- (b) where the planholder of the plan receives any assets of the plan or is deemed by this Act to have received any assets of the plan, the date when the assets of the plan are received or deemed to have been received.

**19.—(1)** The Lieutenant Governor in Council may make regulations, Regulations

- (a) defining any word or expression used in this Act that has not already been expressly defined in this Act;
- (b) prescribing any matter required by this Act to be prescribed by the regulations;
- (c) prescribing rates of interest for the purposes of this Act or a formula for computing the rates and the method of calculating the interest;
- (d) increasing or decreasing the percentage referred to in subsection 9 (2) in all circumstances or in prescribed circumstances, and prescribing circumstances where no amount is required to be deducted, withheld and remitted under subsection 9 (2);
- (e) prescribing forms and providing for their use;
- (f) prescribing information to be obtained from planholders by depositaries in connection with or for the purposes of this Act;

- (g) requiring any person to make information returns respecting any class of information required by the Minister in the administration of this Act or in determining compliance with this Act;
- (h) providing for the review and approval of specimen Ontario home ownership savings plans.

May be  
retroactive

(2) A regulation is, if it so provides, effective with reference to a period before it was filed.

Commence-  
ment

**20.** This Act comes into force on the earlier of,

- (a) the day on which it receives Royal Assent; or
- (b) the 1st day of September, 1988.

Short title

**21.** The short title of this Act is the *Ontario Home Ownership Savings Plan Act, 1988*.